



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

or to their creditors, since it adds nothing to the wages which must necessarily be incurred in a voyage. The creditors are generally such as have claims for repairs to a vessel, or for materials furnished, and have often no other security for payment than the lien which the law gives them upon the vessel. Both part owners and creditors have a deep interest in its safe return; and when, to the usual means of promoting that object, is superadded the connexion of mariner and part owner, it may be safely assumed, that it would be impolitic, unjust, and contrary to the principles of maritime law, to deny to the mariner his claim for wages. Upon full consideration, made the more necessary from the absence of a reported case of a similar nature, I feel satisfied that the claims of the libellants are fully sustained by the proofs and the law.

Decree accordingly.

---

*In the Supreme Court of Rhode Island.*<sup>1</sup>

NATHAN WARREN, JR. ET AL. APPELLANTS, *vs.* MARY HARDING.

Where a man, who was by profession a mariner, made his will in the Delaware river on board a steamer, which was towing down said river a vessel in which he was to sail as a passenger to Chagres, there to take command of a lighter to lighten vessels arriving in the river, it was held that the will was not within the exception in favor of mariners at sea, the testator being at the time of its execution a passenger and not a mariner in service, and being on his way to engage in a business, which was not that of a mariner at sea.

An appeal from a decree of the Municipal Court of the city of Providence, proving and approving a certain writing as the last will and testament of Thomas A. Harding. The writing, purporting to be the will of said Thomas, was by him signed, and subscribed by Jacob Albertson, as witness, and was admitted to probate as the will of a seaman at sea. The appellants appealed from this decree on the ground, *first*, that said Court had no jurisdiction, the said Thomas having been at the time of his death an inhabi-

<sup>1</sup> Reported in 2 R. I. Rep. 133. We are indebted to Thomas Durfee Esq. State Reporter, for this case, in advance of the publication of the volume.

tant of the town of Bristol, and administration having been granted on his estate by the Court of Probate of said Bristol, before the probate of said will by said Municipal Court; and, *second*, that said paper was not executed with the formalities required by the statute in executing wills, and that, at the time of its execution, said Thomas was not a mariner or seaman at sea and did not intend to make the same, as such will.

It appeared in proof, that Thomas A. Harding was born in Bristol, of which town, it was not disputed, he had been an inhabitant until within a few years of his death. From the age of sixteen until his death, he had been by profession a mariner, and saving about seventeen months, had been constantly abroad in pursuance of his calling as such. At the time the will was executed, said Thomas was on board the steamer *Henlopen* in the Delaware river. The steamer was towing the schooner *Zachary Taylor* from Philadelphia to the Delaware Breakwater, from whence said schooner was bound to Chagres, and said Thomas was to go and did go in her as a passenger to Chagres, whither he was going to take charge of a lighter to lighten vessels arriving in Chagres river, in pursuance of a contract between him and Messrs. Howland & Aspinwall of New York. The will was executed between Philadelphia and Lewistown, and, after the execution, the steamer anchored off Lewistown and said Thomas went ashore, the steamer remaining at anchor during the night. The will was dated May 14th, 1849, and the testator died in the Chagres river, in August, 1849.

There was much contradictory evidence, put in on both sides, to prove the residence of the testator, which is considered in the opinion of the Court.

*Hoppin* for the appellee, cited 2 Black. Commentaries, p. 501. "In the goods of Coy," 7 Eng. Ecc. R. 341, 375, 522.

*Blake* for the appellant.

The opinion of the Court was delivered by

GREENE, C. J.—The first question to be settled is whether the testator had his domicile in Providence or Bristol at the time he made his will. The evidence on this subject is conflicting. Bris-

tol was his native place, and, it is agreed, was his home at the death of his wife and for some time after. He was from home the greater part of his time. He was at home in 1847 and in 1849. He seems to have expressed himself to his Bristol friends one way, and to his Providence friends another way, as to where he intended to make his home. After a careful examination of all the evidence, we do not find sufficient evidence of any change of domicile from Bristol to Providence.

But as the case has been fully argued upon its merits, we have thought it for the benefit of all parties to announce the opinion we have formed and thus prevent future litigation.

The testator took passage on board the steamboat *Henlopen* at Philadelphia, for the Delaware Breakwater, where he embarked on board the schooner *Zachary Taylor* for Chagres, as passenger, and arrived at that port. He was employed by Howland & Aspinwall of New York to go to Chagres, for the purpose of taking command of a lighter vessel, to lighten vessels bound up the river to Chagres. He made his will while on board the *Henlopen*, and after he sailed from Philadelphia. The *Henlopen* towed the *Zachary Taylor* to the Delaware Breakwater, and thence the latter vessel sailed for Chagres.

The will, being attested by only one witness, is not entitled to probate, unless it comes within the proviso, which excepts the wills of seamen at sea and soldiers in actual service, from the general operation of the statute.—Dig. of 1844, p. 232, § 4.

The testator was a master mariner by profession. The counsel for the executor contends that the business, in which he was to be employed on his arrival at Chagres, was that of a seaman at sea, and, being in the employ of Howland & Aspinwall on his passage to Chagres to be employed in that business, he is to be deemed a seaman at sea, just as much as he would be after his arrival at Chagres, and the commencement of the service he was to be engaged in there.

Now, in the first place, we do not think that as captain of a lighter vessel in the river, lighting vessels to that port, he could be considered a seaman at sea. But if this were otherwise, and his

employment after his arrival at Chagres, was on a voyage across the Atlantic, still we think while a passenger on board the *Henlopen* and the *Zachary Taylor*, he was not a seaman at sea. The meaning of these words is a seaman employed as such at sea. If he had been one of the seaman on board the *Zachary Taylor*, he would be considered as at sea, as soon as she sailed from the wharf at Philadelphia, and this whether at the time of making his will he was on board the *Henlopen* or the *Zachary Taylor*, the two vessels being fastened together and the *Henlopen* towing the *Zachary Taylor*.

The difficulty is not in the place where the will was made, but in the fact that the testator was not at the time of making it a seaman in the sense of the statute, any more than he was in his passage in the cars from Providence to Stonington and thence in the steamboat to New York and thence in the cars to Philadelphia.

Decree of the Municipal Court reversed.

---

*Supreme Court, New York. Monroe General Term.*<sup>1</sup>

DANIEL W. BUELL *vs.* AARON BISSELL, ADMINISTRATOR, ETC., OF  
ALEXANDER BISSELL, DECEASED.

1. The payee of a promissory note, who transfers it for a valuable consideration, though after its maturity, impliedly warrants that it is not void for usury.
2. The ground of implied warranty, either of title or quality, at common law, is the presumed superior knowledge of the vendor; per *SELDEN, J.*
3. A., the payee of an overdue note, transferred it for a valuable consideration to D., who sued on it; but the defence of usury being interposed by the maker, the latter had judgment, with costs. D. then brought an action against the administrator of A. for the amount paid on the sale of the note; *held*, that he was entitled to recover.
4. *Held*, also, that he might have not only the defendant's, but his own costs in the prior action; *quære*, whether he was not entitled also to counsel fees therein.

The plaintiff sold to Alexander Bissell, the defendant's intestate, a lot of land, and received, in part payment therefor, a promissory

<sup>1</sup> WELLES, JOHNSON, and SELDEN, Justices.